IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 2 of 2006
With
CIVIL APPLICATION No. 44 of 2006
In
APPEAL FROM ORDER No. 2 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GORDHANBHAI ZAVERBHAI MORDIYA AND OTHERS
Versus
HEMANSHU SURESHBHAI PATEL AND OTHERS

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Appearance :
MR LR PATHAN for Appellants.
MR KK TRIVEDI for Respondent No.1.
RULE SERVED for Respondent Nos. 2 - 10.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 31/01/2007

ORAL JUDGMENT

The appellants herein are the original defendants No.8, 9, 10 and 12 against whom and other defendants, respondent herein has filed a suit being Special Civil Suit No.101/2004 for declaration and injunction. By filing aforesaid suit, it is prayed that it may be declared that defendants No.1 to 7 were not owners of the suit property and the sale deed, which they have executed in favour of defendants no.8 to 12 is null and void and the defendants may be restrained from disturbing the possession of the plaintiffs on the basis of such sale deed. Permanent injunction is also sought for to the effect that the defendants may be restrained from transferring or alienating the suit property.

2) During the pendency of the suit, the plaintiff submitted an application at Exh.5 for interim injunction. Contesting defendants of the suit, i.e., the present appellants, have denied the averments made int eh plaint as well as in interim injunction application at Exh.5.

3) Learned trial Judge by impugned order allowed interim injunction application and granted interim injunction in terms of paragraph 8 (1) of the application during the pendency of the suit. It is the aforesaid order, which is impugned in this Appeal from Order at the instance of defendants no.8, 9, 10 and 12.

4) During the pendency of this Appeal from Order, it is agreed by both the learned advocates that this Appeal from Order may be disposed of by directing that whatever may be the transaction carried out by the appellants during the pendency of the suit shall be subject to the result and final outcome of the suit and, in case, the disputed land is transferred to anyone, present appellants shall disclose the name of such purchaser before the trial Court.

5) At this stage, Mr.Trivedi, learned advocate for the respondent - plaintiff submitted that the plaintiff may be permitted to join such purchaser as a party in the suit so that if the suit is allowed an effective decree can be passed against such purchaser.

6) Considering the consensus prevailing between the parties, order of the trial Court passed below Exh.5 is set aside. However, it is clarified that in case the property in question is transferred to anyone, such transfer shall be subject to the final outcome of the suit and the concerned defendants - appellants herein shall disclose the name of such purchaser before the trial Court within a period of one month from such transaction. Thereafter, it will be open for the plaintiff to prefer an application to join such purchaser as party to the suit and if any such application is preferred, the trial Court may decide such application after hearing both the parties and in accordance with law.

7) It is also clarified that while deciding the suit, trial Court may not be influenced either by the observations made while deciding Exh.5 application or by the observations of this Court made in this Appeal from Order and the suit may be decided on its own merits and as per the evidence on record. It will be open for the parties to request the learned trial Judge to expedite the suit and if any application is made in that behalf, it is for the concerned Judge to consider such application as per other priorities.

8) Accordingly, order of the trial Court is substituted to the aforesaid extent and this Appeal from Order is allowed to above extent with no order as to costs.

9) In view of above order on main appeal, no order on Civil Application No.44 of 2006. Rule issued in Civil Application is discharged with no order as to costs.

(P.B.Majmudar, J.)

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